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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,594	09/29/2004	Toshimitsu Baba	2004-1499A	5906
513 7590 07/31/2007 WENDEROTH, LIND & PONACK, L.L.P. 2033 K STREET N. W. SUITE 800 WASHINGTON, DC 20006-1021			EXAMINER DEES, NIKKI H	
			ART UNIT 1709	PAPER NUMBER
			MAIL DATE 07/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/509,594	Applicant(s) BABA ET AL.	
	Examiner Nikki H. Dees	Art Unit 1709	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>29 September 2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:

p. 10 line 8 change "conformed" to "confirmed"

p. 13 line 12 "adjusting" to "adjusted"

p. 16 line 11 "dissolve din" to "dissolved in"

p. 17 line 15 "toe" to "to".

Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emoto (CA 2,318,566) in view of Saitoh et al. (EP 1,174,516).
4. Emoto (Abstract) teaches a gelatinous food product having a protein content ranging from 2-60% and a pH in the range of 3.3 to 4. Emoto goes on further to state examples of proteins for the invention including soybean protein (p. 11 line 7). These

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disclosures read on Applicants' claim of a jelly food having less than 10% soybean protein in a weakly acidic region. However, Emoto is silent as to the phytic acid content of the soy protein, as well as the particular fraction of soy-protein utilized.

5. Saitoh et al. have disclosed a method for separating soybean protein 7S fraction from soybean protein 11S fraction. The proteins are treated with phytase to lower the phytic acid content of the final product to less than 0.2%. They report the final phytic acid content of the protein solutions as 0.05% [0041]. A low level of phytic acid is desired to minimize chelation of micronutrients [0007].

6. Motivation to combine the 7S soybean protein product taught by Saitoh et al. in a jelly food such as the one taught by Emoto is provided by Bringe (6,566,134).

7. Bringe speaks to the texturizing properties and physiological improvements of soy protein ingredients containing high levels of beta-conglycinin (7S) relative to glycinin (11S) protein (Abstract). In particular, he notes that compositions containing greater levels of beta-conglycinin have preferable gelling properties in a weakly acidic region.

8. It would have been obvious to one having ordinary skill in the art at the time the invention was made that the low-phytic acid 7S soybean protein claimed by Saitoh et al. could be used in a jelly food such as the one claimed by Emoto in order to provide a final product with desirable textural and nutritional properties.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nikki H. Dees whose telephone number is (571) 270-3435. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST (first Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Lawrence Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

D. LAWRENCE TARAZANO
PRIMARY EXAMINER



Nikki H. Dees
Examiner
Art Unit 1709